

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

USDC SDNY
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DATE FILED: 12/9/2022

SMART SHOPPERS BH LLC,
Plaintiff,
Against

TYLERS COFFEE LLC D/B/A TYLERS ACID-
FREE COFFEE A/K/A TYLERS COFFEES®,
LIFTED COFFEE LLC, RESINEATER420 LLC,
TYLER ORNSTEIN, and DOUG HARDING,
Defendants.

Civil Action No. 22-cv-4969

**NOTICE OF MOTION AND
MOTION TO DISMISS THE
AMENDED COMPLAINT**

TO THE COURT AND ALL PARTIES AND COUNSEL:

PLEASE TAKE NOTICE that Defendants Tyler's Coffee LLC d/b/a Tylers Acid-Free Coffee a/k/a Tyler's Coffees®, Lifted Coffee LLC, Resineater420 LLC, Tyler Ornstein, and Doug Harding, hereby moves this Court before the Honorable Nelson S. Román, United States District Judge for the Southern District of New York, The Hon. Charles L. Briant Jr. Federal Building and United States Courthouse, 300 Quarropas St., White Plains, NY 10601, at a time and date to be designated by the Court, for an order dismissing Plaintiff's Amended Complaint in its entirety and with prejudice.

This motion is made pursuant to Federal Rule of Civil Procedure 12(b)(3) and 12(b)(6), and is based on the following grounds: (1) Plaintiff has failed to state a plausible claim for violation of New York General Business Law §§ 349 and 350 because the statement "Slightly Sweet" is not misleading to reasonable consumers; (2) Plaintiff has failed to state plausible claims for fraud, negligent misrepresentation, and breach of warranty; (3) Plaintiff has failed to state a claim for unjust enrichment because that claim is entirely duplicative of her General Business Law claim; and (4) Plaintiff lacks standing to bring her claim for injunctive relief.

This motion is based on this Notice of Motion and Motion to Dismiss, the attached Memorandum of Law, the Complaint and all other pleadings on file in this matter, and such other written and oral argument as may be presented to the Court.

MEMO ENDORSED

Dated: October 24 , 2022

Woodmere, New York


By: /s/ Jacob Rubinstein
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Tylers Acid-Free Coffee A/K/A Tylers
Coffees®, Lifted Coffee LLC,
Resineater420 LLC, Tyler Ornstein, and
Doug Harding*

Defts' motion to dismiss is denied without prejudice to refiling on the reply date, Jan. 4, 2023, for failure to follow the Court's instructions (see ECF No. 46). Clerk of Court is requested to terminate the motion at ECF No. 48.

**Dated: White Plains, NY
December 9, 2022**

SO ORDERED:



HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE